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FORTIETH ANNUAL REPORT

2010-2011

March 31, 2011

The Manitoba Law Reform Commission was established by *The Law Reform Commission Act* in 1970 and began functioning in 1971.

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John C. Irvine
Hon. Mr. Gerald O. Jewers
Hon. Mr. Justice Perry W. Schulman

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The Department of Justice, Government of Manitoba

and

The Manitoba Law Foundation

Copies of the Commission's Reports may be ordered from the Publications Branch, Office of the Queen's Printer, 200 Vaughan Street, Winnipeg, MB R3C 1T5; however, some of the Commission's Reports are no longer in print.

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THE COMMISSION'S MANDATE

The Manitoba Law Reform Commission is an independent agency of the Government of Manitoba established by *The Law Reform Commission Act*. The Commission's duties are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including:

- the removal of provisions of the law that are outdated or inconsistent;
- the maintenance and improvement of the administration of justice;
- the review of judicial and quasi-judicial procedures under any Act;
- the development of new approaches to, and new concepts of, law in keeping with and responsive to the changing needs of society and of individual members of society; and
- any subject referred to it by the Minister.

MANDAT DE LA COMMISSION

La Commission de réforme du droit du Manitoba est un organisme indépendant du gouvernement du Manitoba, établi en vertu de la *Loi sur la Commission de réforme du droit*. La Commission a pour fonctions de faire enquΛte sur les questions se rapportant au droit manitobain et de les étudier en vue de faire des recommandations pour améliorer, moderniser et réformer le droit, et notamment en vue:

- de supprimer les dispositions du droit qui sont désuΓItes ou incompatibles;
- de soutenir et d'améliorer l'administration de la justice;
- d'examiner les procédures judiciaires et quasi-judiciaires prévues par une loi quelconque;
- d'élaborer de nouvelles méthodes et de nouveaux concepts de droit correspondant B l'évolution des besoins de la société et des individus qui la composent;
- de traiter tout autre sujet que le ministre lui soumet.

PART I

INTRODUCTION

The Manitoba Law Reform Commission is pleased to present its annual report for 2010-2011, after another productive year. The Commission released two final reports in 2010-2011, dealing with limitations of actions and with the parol evidence rule. The Commission also released two informal reports which were sent to the Minister of Justice. One of these reports dealt with the review of compensation for the loss of homestead rights and the other dealt with the remedy of specific performance and the uniqueness of land in Manitoba. A draft report for consultation on *The Stable Keepers Act* was also distributed to as many stable keepers and boarding kennel operators as the Commission could locate as well as a number of agricultural offices within the province. Work is also underway on a number of other topics, including *The Tortfeasors and Contributory Negligence Act*, conversion and detinue and the division of pensions on marital breakdown.

The Manitoba Law Reform Commission regrets to report that Darlene Jonsson, one of the Commission's part-time legal counsel, resigned from the Commission in October 2010 to accept a legislative drafting opportunity with the government of Prince Edward Island. The other part-time legal counsel, Leah Craven, resigned from the Commission in December 2010 in order to relocate to Alberta with her family. The Commission will surely miss the expertise of these two professional and accomplished legal counsel.

As of January 2011, the Commission was fortunate to hire Catherine Skinner as part-time legal counsel. Catherine will be taking on the full time legal counsel role for the Commission beginning in April 2011.

PART II

THE YEAR IN REVIEW
April 1, 2010 to March 31, 2011

1. REPORTS ISSUED

The full text and executive summaries of all reports can be found on our website at http://www.gov.mb.ca/justice/mlrc/.

A. The Parol Evidence Rule (Report #122)

On August 31, 2010, the Commission released a report on the parol evidence rule in connection with contracts that are outside the scope of *The Consumer Protection Act* as well as those contracts that are governed by *The Consumer Protection Act*.

The report observes that the parol evidence rule has caused much difficulty within the law of contracts and can preclude the admission of relevant evidence of prior communication between parties to contracts. The Commission considers possible legislative reform to abolish or clarify the parol evidence rule in connection with written contracts that are not governed by *The Consumer Protection Act*, but concludes that no legislative action should be undertaken. In regard to consumer transactions that fall within the scope of *The Consumer Protection Act*, this report reviews consumer protection legislation in some other Canadian jurisdictions that have abolished the parol evidence rule. The Commission recommends that improvements could be made to *The Consumer Protection Act* in Manitoba by expanding on section 58(8) dealing with express warranties. The Commission also recommends that parties be prohibited from contracting out of sections 58(6) and 58(8) of *The Consumer Protection Act* in the absence of special circumstances.

B. Limitations (Report #123)

This report on limitations was released on October 26, 2010. The law of limitations prevents a litigant with an otherwise viable claim from pursuing that claim in the courts after a certain period of time has passed. This area of the law has always been purely statutory, from its origins in England in the 16th century. Canada inherited the English statutes of limitations, but different provinces have adapted them in different ways over the years.

Manitoba's *Limitations of Actions Act* was enacted in 1931, and although amended in 1967, 1980 and 2002, is based on the same principles as the original inherited English limitations legislation. In recent years several Canadian jurisdictions have enacted, and the Uniform Law Conference has proposed, legislation that simplifies, clarifies and rationalizes the law of

limitations and introduces increased uniformity among the provinces. The Commission's report describes the structure of the more modern limitations regimes in other jurisdictions, and recommends a new limitations system for Manitoba.

In its report, the Commission recommends that the various categories of claims set out in the current Act be abolished, and replaced with a single, basic two year limitation for all claims. This limitation would begin running when the claim was discovered, or ought to have been discovered, instead of when the cause of action arose. This new Act would also provide for a 15 year ultimate limitation, running from the date on which the act or omission on which the claim is based occurred. After this, no claim could be brought, regardless of discoverability. Exceptions to these rules would be limited, and would include claims arising out of sexual assaults or assaults in intimate or dependent relationships and claims of aboriginal title. Limitations would be suspended where the claimant is a minor or incapable of bringing a claim, or where the defendant wilfully conceals the claim.

Another significant change recommended by the Commission is the repeal of the current limitations applying to claims related to real property. The Commission recommends that no limitation apply to a proceeding to recover possession of real property, but that otherwise, claims related to real property should be subject to the overall limitations regime.

Finally, the Commission recommends that the limitations provisions in all Manitoba statutes be examined, and abolished or amended where appropriate. The new *Limitations Act* would then provide that if there is a conflict between it and any other Act, the other Act would prevail.

C. Review of Compensation of Loss of Homesteads Rights (Informal Report #25)

The Commission submitted an informal report to the Minister of Justice on May 27, 2010. The report deals with compensation for the loss of homestead rights where a disposition is made without consent through the fraud or wrongful act of the owning-spouse. Consideration is given to whether damages should be left within the discretion of the court or whether a legislated formulaic model of compensation which exists in other jurisdictions is preferable. Despite the acknowledged challenges of assessing damages in such cases, the Commission does not recommend legislative reform to *The Homesteads Act*. (see Appendix B)

D. Remedy of Specific Performance and the Uniqueness of Land in Manitoba (Informal Report #26)

This informal report was submitted to the Minister of Justice on October 26, 2010. In this report the Commission considers the law in Manitoba regarding the availability of specific

performance in connection with contracts for the purchase and sale of land. As a result of recent case law from the Supreme Court of Canada and subsequent appellate decisions, there is uncertainty in other jurisdictions respecting the availability of specific performance in this context. The report considers whether a legislative amendment to *The Law of Property Act* would protect purchasers and enhance real property transactions in Manitoba. The Commission made four recommendations in this regard, the principal one being, that land that is subject to a contract of purchase and sale be deemed unique for the purpose of determining whether specific performance is an appropriate remedy. (see Appendix B)

2. IMPLEMENTATION

We continue to urge the Minister of Justice to implement the outstanding recommendations of the Commission. In addition to our most recent reports, areas of particular concern to the Commission are the recommendations relating to: *Enduring Powers of Attorney: Supplementary Report* (Report #117, 2008), *Wills and Succession Legislation* (Report #108, 2003), *Compensation for Vaccine-Damaged Children* (Report #104, 2000) and *Informal Assessment of Competence* (Report #102, 1999).

3. CURRENT PROJECTS

A. Conversion and Detinue

This project originated from the Manitoba Law Reform Commission report on Limitations, which was released in October 2010. In the Limitations report, the Commission identified what it saw as the primary areas of Manitoba limitations law requiring modernization, as well as the best ways of accomplishing that goal. Ultimately, the Commission concluded that broader reforms are needed to rationalize the substantive law of conversion and detinue in Manitoba, including the law relating to the ownership of converted or detained goods following the expiry of the basic and ultimate limitations, and the application of limitations in the case of theft. Accordingly, no recommendation regarding conversion and detinue was made in the Limitations report and the Commission noted that a separate report recommending reforms to the law of conversation and detinue, including the law with respect to remedies and limitations would be issued.

As an example of law reform in other jurisdictions, in the United Kingdom, the tort of detinue was abolished and subsumed within the tort of conversion by the *Torts (Interference with Goods) Act 1977*. The United Kingdom has also provided for exceptions in its limitations statute for conversions that constitute theft: section 4 of the *Limitation Act 1980* provides that limitations do not apply to the right to bring an action for conversion in respect of theft and allied offences.

This project is in its preliminary stages.

B. *The Stable Keepers Act*

The Commission embarked on this project at the suggestion of a rural Business Development Specialist with Manitoba Agriculture, Food and Rural Initiatives, in connection with the legal rights of farmers who pasture or custom feed cattle for another person, that *The Stable Keepers Act* should be reviewed.

The Commission released a Consultation Paper in December 2010 with respect to updating *The Stable Keepers Act*. This Paper was distributed to as many stable keepers and boarding kennel operators the Commission could locate as well as a number of agricultural offices within the Province, for comment. The Commission is currently coordinating the responses and preparing a draft report which will be reviewed at the Commission's next meeting. This report should be completed and ready for release in the fall.

C. Review of Defamation Law Respecting Journalism

The Commission had been engaged in a project regarding defamation law respecting journalism, with particular emphasis on publications concerning matters of public interest. This project has been placed in abeyance as a result of the Supreme Court of Canada decision of *Cusson v. Quon* wherein the court created a defence of "responsible communication on a matter of public interest". The Commission will consider judicial treatment and jurisprudence respecting this new defence, after which time the Commission may publish either a formal or informal report.

D. *The Tortfeasors and Contributory Negligence Act*

The Commission has reviewed a submission for possible law reform to the *Tortfeasors and Contributory Negligence Act*, respecting several issues related to contributory negligence and tortfeasors for the purpose of recommending improvement of the *Tortfeasors and Contributory Negligence Act*. The Commission will be commencing the preliminary research stage of this project shortly.

E. Pension Benefits and Marital Breakdown

The Commission is carrying out research with respect to the division of pension benefits on marital breakdown. The economic disadvantage resulting from the loss of survivor's benefits by a divorced spouse was raised with the Commission, and the Commission is also considering

broader questions of the division of benefits generally. Currently in Manitoba, *The Pension Benefits Act* requires the use of the Immediate Settlement Method for the division of pension benefits in a defined benefit plan, which requires the commuted value of the spouse's share in the pension be transferred from the plan immediately, valued as if the member's employment terminated on the date of separation.

The Commission is considering whether the use of another method would produce a more equitable result. This project has been put in abeyance, as a result of the resignation of the legal counsel who was working on it, and pending the finalization of other current reports.

4. POTENTIAL PROJECTS

The Commission continues to receive suggestions for new projects from members of the public, members of the legal community and Commissioners. From these suggestions, and its review of law reform projects that had been deferred in previous years, the Commission has created the following list of projects in no particular order:

- Prenatal liability
- *The Nuisance Act*
- Contiguous lands: natural and other encroachments
- *The Trustee Act*
- Enforcement of judgments
- Obsolete statutes
- Service of documents

The Commission welcomes comments and suggestions with respect to these subject areas, as well as in relation to other projects that may be appropriate for review.

PART III

ADMINISTRATION

1. THE COMMISSIONERS

The current members of the Commission and their terms of office are as follows:

Commissioner	Affiliation	Term expires
Cameron Harvey, Q.C.	Professor Emeritus, Faculty of Law University of Manitoba	June 21, 2009*
John C. Irvine	Professor, Faculty of Law University of Manitoba	August 20, 2009*
Gerald O. Jewers	Justice, Court of Queen's Bench (retired)	June 21, 2009*
Perry W. Schulman	Justice, Court of Queen's Bench	July 25, 2010*

* Awaiting Order In Council for re-appointment.

At the present time, the Commission has two vacant member positions and is awaiting an Order In Council to fill these two vacancies and re-appoint the current members.

During the past year, the Commission held 6 regular meetings.

2. STAFF

The Commission regrets to report the resignation of the two part-time legal counsel, Darlene Jonsson and Leah Craven. The Commission has been fortunate to replace them with Catherine Skinner, who started with the Commission as part-time legal counsel in January 2011 and will continue as full-time counsel beginning in April 2011. Therefore, the Commission staff consists of Debra Floyd as the Commission's Administrator, and Catherine Skinner as legal counsel.

3. FINANCE

The Manitoba Law Foundation provides a yearly grant of $100,000 to the Commission. For the fiscal year 2010-2011, the Commission was again fortunate to receive an additional $20,000 from the Manitoba Law Foundation, increasing the grant to $120,000. The Department of Justice continues to provide a combination of in-kind services ($15,000) and a grant ($85,000), for a total of $100,000.

We wish to thank both the Department of Justice and the Manitoba Law Foundation for their continued support of our work.

4. PUBLIC RELATIONS

The Commission provides a monthly submission on law reform updates throughout Canada for the Manitoba Bar Association, Legal Research Section newsletter, *The Law and Library Monthly*. This electronic publication is circulated to all members of the Manitoba Bar Association Legal Research Section. The Commission also submits regular reports to the Manitoba Bar Association monthly newsletter *Headnotes and Footnotes*.

At the request of the Law Society of Manitoba, the Commission provides a news release of all reports for inclusion in *eLaw*, an electronic subscription available to all members of the Law Society of Manitoba as a professional development and competence tool.

The Commission also contributes project updates to *Reform*, a journal of contemporary law reform issues published by the Australian Law Reform Commission.

Many of the Commission's reports have been referred to or commented upon in written publications and electronic sources, including the *Winnipeg Free Press*, *The Lawyer's Weekly*, *The Globe and Mail*, *The Canadian Press*, *CTV Globe Media* and on the websites of various law firms, law societies and governments.

PART IV

CONCLUSION

We again wish to express our thanks to the Manitoba Law Foundation and to the Department of Justice for their continued support of the work of the Commission.

We thank the staff of the Department of Justice, the Faculty of Law, Provincial Archives and Legislative libraries, and the staff of the Property Registry for their continued assistance over the past year.

We also thank the Deputy Minister, Mr. Jeffrey Schnoor, Q.C. for providing a liaison between the Commission and the Minister. Finally, we thank the Minister of Justice and Attorney General, the Hon. Andrew Swan, for his support.

This is a report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. L95, dated this 31st day of March 2011.

(original signed by)
Cameron Harvey, President

(original signed by)
John C. Irvine, Commissioner

(original signed by)
Gerald O. Jewers, Commissioner

(original signed by)
Perry W. Schulman, Commissioner

APPENDIX A

Statement of Receipts and Expenditures 2010-2011 Fiscal Year (000's)

RECEIPTS

Funds carried forward	$ 74.6
Grant from Department of Justice	85.0[1]
Last instalment from the Manitoba Law Foundation for 2008-09	30.0
Grant from the Manitoba Law Foundation (first 3 quarterly instalments)	90.0[2]
Total	**$279.6**

EXPENDITURES

Commissioners' remuneration and benefits	$ 31.0
Staff remuneration (part-time)	98.3
Payroll operating costs	7.0
Consultants	.0
Telephone, postage, courier	6.0
Supplies and service	1.3
Printing, photocopying	1.8
Computer related expenses	8.5
Meetings, travel and accommodation	1.2
Subscriptions and other operating expenses	.4
Membership fees	6.3
Total	**$161.8**
Surplus	**$117.8**[3]

[1] The Province of Manitoba provides the Manitoba Law Reform Commission with an $85,000 grant coupled with $15,000 in-kind services provided by the Department of Justice for accounting services and office accommodation, bringing the total grant from the Province to $100,000.

[2] As noted in previous reports, we carry forward a balance of at least $30,000 each year of our grant from the Manitoba Law Foundation as this last instalment is not received until March 31st each year. Again, this year, with the core grant increase of $20,000 from the Manitoba Law Foundation, our quarterly instalment payments increased to $30,000, totalling a grant of $120,000 for 2010-2011.

[3] A large portion of this year's surplus is due to funds which have been allocated for remuneration for 2 vacant Commissioner positions, as well as a surplus of staff payroll funds due to the resignation of the Commissions two legal counsel. A portion of the surplus is also set aside for printing and distribution costs for current reports.

APPENDIX B

INFORMAL REPORTS

Manitoba Law Reform Commission
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May 27, 2010

Hon. Andrew Swan
Minister of Justice and Attorney General of Manitoba
104 Legislative Building
Winnipeg, MB R3C 0V8

Dear Minister:

Re: REVIEW OF COMPENSATION FOR THE LOSS OF HOMESTEAD RIGHTS

A. INTRODUCTION

In the past, the Commission has found it useful to submit by letter to the Minister of Justice and Attorney General what is referred to as an informal report. The following is such a report and contains our review and recommendation regarding compensation in Manitoba for the loss of homestead rights.

Compensation for a spouse whose homestead rights have been lost through the fraudulent or wrongful act of a spouse in disposing of homestead property has been identified as a potential project for law reform.[1] The matters dealt with in this review arise, in part, out of the case of *Dowse v. Dowse*[2] wherein certain judicial comments regarding the difficulty in assessing damages caused the Commission to consider whether legislative guidance on the quantification of damages for a fraudulent or wrongful disposition would be beneficial.

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[1] A professor at the Faculty of Law, University of Manitoba, suggested this topic for consideration.
[2] (2003), 171 Man. R. (2d) 129 (Man. Q.B.) [*Dowse*].

The case of *Dowse*[3] involved a release of homestead rights which had been erroneously registered. The wife had instructed her lawyer to register a Homestead Notice against title to the family home, but the Registrar of Land Titles erred and registered a Release of Homestead Interest. The court awarded a nominal value of $1,000 for the loss of a tactical advantage of homestead rights given that these rights can be used as part of the negotiation process in domestic disputes. The court also valued the wife's homestead interest, as per actuarial evidence, in the amount of $6,955 and further awarded the wife the sum of $1,000 for punitive or exemplary damages for the husband's duplicity in selling the homestead without a release of homestead rights. One of the unique aspects of this case is that liability and a claim for damages for the fraudulent disposition of homestead property were the foundation of the plaintiff's action. A judicial comment was made that there is no precedent for fixing damages for the loss of tactical advantage and other judicial comments were cited by the court suggesting the difficulty in fixing an amount of damages.[4]

By way of background, it should be noted that while life estates may be valued relatively easily on the basis of actuarial evidence, the valuation of homestead rights may be more difficult; they are not truly proprietary and are not vested rights. Rather, they are inchoate and a contingent expectation of a life estate. *The Homesteads Act*[5] in Manitoba provides for a remedy in damages for a fraudulent disposition and provides that the amount of damages is within the discretion of the court. The Act provides no guidance with respect to the assessment of damages. In contrast, the *Dower Act*[6] in Alberta provides a formula to determine the damages in an action.[7] Some states in the United States also provide a formula to calculate homestead values.

B. SHOULD A REMEDY FOR DAMAGES BE FIXED OR DISCRETIONARY?

Should legislative reform be considered to *The Homesteads Act*[8] so that the statute provides a formula to determine the amount of damages for the loss of homestead rights as a result of a fraudulent or wrongful disposition?

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[3] *Ibid.*

[4] In *Dowse*, Mr. Justice Schwartz cited guidelines suggested by Twaddle J.A. in *Abraham v. Wingate Properties Limited* (1986), 36 Man. R. (2d) 264, and quoted as follows: "...The difficulty in fixing an amount of damages must not deter us from doing justice...A court or judge must, of course, use some logical basis for making his estimate of the damages suffered, but better that the damaged party receive a reasonable, if not mathematically measurable, amount than that there should be no compensation for the loss".

[5] C.C.S.M. c. H80, s. 16.

[6] R.S.A. 2000 c. D-15. Specifically, section 11(2) provides that the amount of damages is a sum equivalent to one-half the consideration for the disposition of the property, if the value of the consideration is substantially equivalent to that of the property, or one-half of the value of the property at the date of disposition, whichever is larger.

[7] Aside from the valuation of homestead rights in a case of a wrongful disposition, the Alberta legislation does not otherwise provide for the valuation of homestead rights.

[8] *Supra* note 5.

C. MANITOBA LEGISLATION

The Homesteads Act[9] provides as follows:

Disposition prohibited without consent

4 No owner shall, during his or her lifetime, make a disposition of his or her homestead unless, subject to sections 2.1 and 2.2
(a) the owner's spouse or common-law partner consents in writing to the disposition;
(b) the disposition is in favour of the owner's spouse or common-law partner;
(c) the owner's spouse or common-law partner has released all rights in the homestead in favour of the owner under section 11;
(d) the owner's spouse or common-law partner has an estate or interest in the homestead in addition to rights under this Act and, for the purpose of making a disposition of the spouse's or common-law partner's estate or interest, is a party to the disposition made by the owner and executes the disposition for that purpose; or
(e) the court has made an order dispensing with the consent of the owner's spouse or common-law partner under section 10.

Liability for fraudulent disposition

16(1) An owner who makes a fraudulent or wrongful disposition of the homestead by failing to obtain
(a) the consent of his or her spouse or common-law partner as required by this Act; or
(b) an order dispensing with the spouse's or common-law partner's consent under section 10;
is liable to the spouse or common-law partner in an action for damages.

Meaning of wrongful disposition

16(1.1) For the purpose of subsection (1), a wrongful disposition includes a disposition where an owner, in good faith, obtains the consent of a spouse or common-law partner who does not have homestead rights under this Act and fails to obtain the consent of the spouse or common-law partner who does have homestead rights.

Damages

16(5) The court may, in its discretion, determine the amount of a spouse's or common-law partner's damages under this section, subject to such terms and conditions as the court considers appropriate.

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[9] *Ibid.*

Contracting out

28 Nothing in this Act prohibits a person, for valuable consideration, from releasing or contracting out of his or her rights under this Act, either before or after marriage or before or after commencement of a common-law relationship.

The scheme of the legislation provides that where homestead property is conveyed without consent to an innocent purchaser for value without notice of a homestead interest, and the property becomes duly registered, the only remedy available to a spouse is one in damages. In contrast, if the person who acquired an interest under a disposition had actual knowledge of the untruth of an affidavit or statutory declaration or participated or colluded in the fraud, upon an application by the owner's spouse, the court shall set the disposition aside.[10]

The Law of Property Act[11] provides for the valuation of homestead rights in a court-ordered sale of property. Section 24 provides as follows:

Value of inchoate homestead right and payment thereof

24 Where a person is a party to the action, the court shall, in case of sale, determine the value of any rights under The Homesteads Act of his or her spouse or common-law partner according to the principles applicable to deferred annuities and survivorships, and shall order the amount of that value to be paid out of the share of the purchase money to which the person is entitled, or shall order the payment to the spouse or common-law partner of the person out of the share of the purchase money to which the person is entitled, of an annual sum, or of such income or interest…; and the payment shall be a bar to any right or claim under The Homesteads Act.[12]

D. CASE LAW IN MANITOBA REGARDING VALUATION OF HOMESTEAD RIGHTS

Much of the case law pertaining to dispositions made without homestead consent pertains to whether transactions can be set aside and in these cases the courts have not needed to deal with the assessment of damages. In *Migas v. Migas Estate*,[13] the husband swore a false dower

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[10] *Supra* note 5, s. 5.

[11] C.C.S.M. c. L. 90.

[12] Section 24 seems to present some uncertainty for the courts. For example, in *Winspear Higgins Stevenson Inc. v. Frieson* [1978] 5 W.W.R. 337, O'Sullivan JA noted that "…I must confess that at the present time I would have difficulty in determining and applying the "principles applicable to deferred annuities and survivorship"".

[13] *Migas v. Migas Estate* (1990), 64 Man. R. (2d) 276 (Man. Q.B.). Note that since the 1992 enactment of *The Homesteads Act*, *supra* note 5, the subject rights are referred to as homestead rights rather than dower rights.

affidavit and transferred part of the subject property to his son. Had the son known the affidavit was false, the transfer of the homestead would have been invalid and ineffective. In this case, the court found that while the son did not know that the affidavit was false, he knew that his mother had lived and worked on the land, and he could not rely upon a false affidavit through his willful blindness. The court held that the transaction between the husband and son was "absolutely null and void for all purposes". As another example, in *Moreau v. Moreau Estate*,[14] the deceased transferred homestead property without consent, but the recipient obtained good title and had no knowledge of the untruth of the affidavit. The court held that while the transfer of the property deprived the spouse of her dower rights and she did have a cause of action in damages, the action was statute barred. Recently, in the case of *Williams v. Kruger*,[15] the Manitoba Court of Queen's Bench reaffirmed the need for consent in disposing of homestead property and the right to set aside such a transaction or to seek damages. However, the court could not deal with damages because the proper application had not been filed.

There have been some cases (outside the scope of fraudulent dispositions) where the courts have valued homestead rights. In such cases, the courts have exercised their discretion and awarded a lump sum order of spousal support intended to include the loss of dower rights[16] or have calculated the value of homestead interests based upon actuarial evidence.[17]

E. THE MANITOBA LAW REFORM COMMISSION'S REPORT ON *THE DOWER ACT*

The Manitoba Law Reform Commission issued a report in 1984 entitled *An Examination of 'The Dower Act'*.[18] The Dower Act Report dealt with various issues related to the distribution of property and was originally referred to the Commission as a consequence of the enactment of marital property and family maintenance legislation. In the Dower Act Report, the Commission considered whether a remedy should be available to the non-consenting spouse where a

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[14] *Moreau v. Moreau Estate* (1986), 42 Man. R. (2d) 299 (Man. Q.B.).

[15] *Williams v. Kruger* (2008), 229 Man. R. (2d) 133 (Man. Q.B.). This case involved a reference to a master for an accounting and valuation of the parties' assets pursuant to *The Family Property Act*, C.C.S.M. c. F25. The wife disposed of property in which the husband had homestead rights, but failed to obtain her husband's consent. The husband had contributed to the betterment of the land. The court commented that it was unfortunate that the wife's disposition took place without dealing with the husband's homestead interest. However, in the absence of an application filed by the husband, the court found that it had no reference power to impute a homestead value in favour of the husband. The court noted that under certain evidentiary conditions the husband may apply to set aside a transfer and referred the husband to his remedies pursuant to section 16 of *The Homesteads Act*. There is no further judicial history of this case. Aside from *Dowse*, this is the only other Manitoba case to have considered section 16 of *The Homesteads Act*. In the other reported cases where valuation issues arose, it was pursuant to the repealed *Dower Act*, R.S.M. 1970, c. D-100.

[16] For example, in *Palahitski v. Palahitski* (1982), 18 Man. R. (2d) 374 (Man. C.A.), the Court of Appeal increased a lump sum order of spousal support to compensate a wife for her loss of dower rights as a result of the dissolution of the marriage.

[17] For example, in *Zarowiecki Estate*, [1982] 4 W.W.R. 728 (Man. Surr. Ct. J.), the court determined the life interest of a widow in homestead property based upon the sale proceeds calculated on the basis of actuarial evidence (the components in the calculation included the interest rate, the value of the property and the life expectancy of the widow).

[18] Manitoba Law Reform Commission, *An Examination of 'The Dower Act'* (Report # 60, 1984) [Dower Act Report].

disposition has occurred absent the written consent requirement, and recommended a provision to confer expressly a cause of action for damages on the non-consenting spouse. Further, the Dower Act Report also considered the fixed formula approach in other legislation and provides as follows:[19]

> "With respect to the measure of damages, we prefer the discretionary approach adopted in Ontario and other jurisdictions rather than Alberta's fixed formula. As mentioned earlier, Alberta arbitrarily fixes the damages to which a spouse is entitled at one-half the value of the property. We believe that the discretionary approach will provide greater flexibility to meet the facts and circumstances of each particular case."
>
> ...
>
> **Recommendation 80**
>
> *That the non-consenting spouse should have a cause of action against the owner spouse if a disposition of the homestead is made without consent through the fraud or wrongful act of the spouse.*
>
> **Recommendation 81**
>
> *That on application by the non-consenting spouse, the court may, in its discretion, determine the amount of damages to be paid by the owner spouse subject to such terms and conditions as the court considers appropriate.*

These recommendations (among most others in the report) were implemented by the enactment of *The Homesteads Act*.[20]

F. OTHER LAW REFORM COMMISSIONS

The quantification of the loss of homestead rights has been the subject of other law reform attention. The Alberta Law Reform Institute[21] issued a report recommending reforms to

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[19] *Ibid.* at 222-223.

[20] *Supra* note 5 and quoted earlier at note 9.

[21] Alberta Law Reform Institute, *The Matrimonial Home* (Report for Discussion #14, 1995). There are differences between a matrimonial home and a homestead and the Alberta Law Reform Institute's report is mentioned only for its recommendations pertaining to homestead dispositions without consent. Briefly stated, the matrimonial home is defined as property that is owned or leased by one of the spouses and has been occupied by the spouses as their family home. In contrast, the *Dower Act* defines homestead as a parcel of land on which the dwelling house occupied by the owner of the parcel as the owner's residence is situated, and need not have been occupied by both spouses.

the *Dower Act*,[22] *inter alia*. Consideration was given to an action for damages for the non-consenting spouse where a disposition of the homestead is made through fraud or a wrongful act. This report suggested that while the Alberta legislation contains a fixed formula for the assessment of damages for such an action, the "computation of damages, and the terms and the conditions that may be imposed, should be at the discretion of the court, as in Manitoba". Further, it was observed that while the formulaic approach attempts to "simplify the question of damages, eliminating the need to consider actuarial and other evidence to compute the value of a lost life estate", there is still much uncertainty surrounding the correct assessment of damages (i.e. determining whether the consideration for the sale of the home is equal to its value). It was recommended that judicial discretion is warranted and some guidance be provided to assist in the assessment of damages (such as the costs of relocation and comparable accommodation or any inconvenience caused to a spouse or the children of the marriage).[23]

G. CONCLUSION

While the scope of this review considers the valuation of homestead rights in cases of fraudulent or wrongful dispositions, it is noted that for valuation of homestead rights generally, courts have valued such rights using their discretion and actuarial evidence, notwithstanding the acknowledged difficulty associated with this task.

It is concluded that the current compensation model pursuant to *The Homesteads Act*[24] should remain discretionary and that a fixed formula model could create unnecessary complications and could unduly restrict a court's discretion. Ultimately, the courts are best informed to determine the appropriate damages, and accordingly the Commission does not recommend legislative reform.

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[22] R.S.A. 1980, c. D-38.
[23] *Ibid.* at 113-115.
[24] *Supra* note 5.

This is informal report no. 25 pursuant to section 6 of *The Law Reform Commission Act*, C.C.S.M. c. L95, signed this 27th day of May, 2010.

"Original Signed by"
Cameron Harvey, President

"Original Signed by"
John C. Irvine, Commissioner

"Original Signed by"
Gerald O. Jewers, Commissioner

"Original Signed by"
Perry W. Schulman, Commissioner

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October 26, 2010

Hon. Andrew Swan
Minister of Justice and Attorney General of Manitoba
104 Legislative Building
Winnipeg MB R3C 0V8

Dear Minister:

RE: THE REMEDY OF SPECIFIC PERFORMANCE AND THE UNIQUENESS OF LAND IN MANITOBA

A. INTRODUCTION

In the past, proposals for law reform short of a formal report have been forwarded by the Manitoba Law Reform Commission to the Minister of Justice and Attorney-General for consideration. In such cases, the Commission has found it effective to submit by letter what is referred to as an informal report. The following is such a report and contains our review and recommendations regarding the availability in Manitoba of the remedy of specific performance to a purchaser for a breach of a contract for the sale and purchase of land.[1]

A brief overview of the remedy of specific performance in relation to contracts for the sale and purchase of land might be useful. Historically, the common law provided that the most appropriate remedy for a breach of contract was an award of damages in that a monetary award was best able to put plaintiffs in the position that they would have been in had the contractual obligation been fulfilled. In equity, wherever the remedy of damages was considered incomplete or inadequate, the remedy of specific performance could be awarded on a discretionary basis. With respect to contracts for the purchase and sale of land, it was often considered that land is unique so that monetary damages could not properly compensate a purchaser for their loss given

[1] The Commission appreciates the comments and assistance received from Mr. Edward D. (Ned) Brown, Pitblado LLP.

the unavailability of an equivalent replacement property. Specific performance was generally available as a remedy without an onus to prove uniqueness.[2]

The historic presumption that land is unique and the tendency towards specific performance changed as a result of the Supreme Court of Canada decision in *Semelhago v. Paramadevan*[3] and subsequent appellate decisions.[4] The state of the law in this regard has caused uncertainty and has been the subject of a significant amount of litigation in other common law Canadian jurisdictions.[5] The Manitoba Law Reform Commission has considered whether clarification of the remedy of specific performance might be beneficial in Manitoba.

B. OVERVIEW OF THE *SEMELHAGO* DECISION

Ironically, *Semelhago* was not about specific performance; rather, it was about the quantification of damages in a breach of contract for the sale and purchase of a house and the principles that ought to apply to the assessment of damages in lieu of specific performance. The parties concurred that specific performance was an appropriate remedy, but at the time of trial the

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[2] This paragraph is based upon Anger and Honsberger, *Law of Real Property*, 3rd ed. looseleaf, (Aurora: Canada Law Book, 2007) at 23-16 to 23-22. Anger and Honsberger observe that some cases imposed restrictions upon the availability of specific performance, such as where plaintiff purchasers speculated on an increase in market value for investment purposes or where plaintiff vendors failed to mitigate their loss by not returning property to the open market. Further, in the 1970s, courts began limiting the availability of specific performance for disputes involving personal property to cases where a plaintiff could establish a "substantial and legitimate interest" in seeking to have the contract enforced, *as per*, *Asamera Oil Corp. v. Sea Oil & General Corp.*, [1979] 2 S.C.R. 465, wherein the court imposed this limitation. However, the general trend had been to regard land as unique and specific performance was routinely available as a remedy.

[3] *Semelhago v. Paramadevan*, [1996] 2 S.C.R. 415 [*Semelhago*]. It is noted by Anger and Honsberger, *ibid.*, at 23-16, that while "some academics have debated the significance of this decision, most jurists have concluded that the legal inquiries relevant to a plaintiff's entitlement to specific performance have changed, and that this case is the genesis of that shift."

[4] For example, *1244034 Alberta Ltd.* v. *Walton International Group Inc.* (2007), 422 A.R. 189 (C.A.) leave to appeal to S.C.C.A. refused, [2008] S.C.C. No 43, *Covlin v. Minhas*, 2009 ABCA 404, *John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.* 63 O.R. (3d) 304 (S.C.J.), leave to appeal to S.C.C. dismissed without reasons, [2003] S.C.C.A. No. 145, where clarification of the principles laid down in *Semelhago* was sought.

[5] *Semelhago* is generally regarded as the leading case in Canada on specific performance as it relates to real property and has been considered or followed in no less than: 43 cases in Alberta; 53 cases in British Columbia; 3 cases in New Brunswick; 1 case in Newfoundland and Labrador; 1 case in the Northwest Territories; 5 cases in Nova Scotia; 78 cases in Ontario; 1 case in Prince Edward Island and 8 cases in Saskatchewan. *Semelhago* has only been mentioned in one reported Manitoba decision, which case is not on point and pertains to an action for damages against the City for improper conduct regarding a request for proposals to develop property (*Mellco Developments Ltd. v. Portage la Prairie* (2001), 167 Man. R. (2d) 161 (Q.B)). It should be noted that specific performance has been granted in various decisions, some of which have involved commercial property; however, the parties and courts have grappled with the principles to be applied when determining uniqueness and the appropriateness of specific performance. This has arguably resulted in varied and inconsistent outcomes.

purchaser elected to take damages in lieu of specific performance. Speaking for the majority, Justice Sopinka indicated that while he had reservations about the propriety of an award of specific performance, given that the lower courts proceeded on the assumption that specific performance was an appropriate remedy, this case would also be disposed of on the basis that specific performance was an appropriate remedy.[6]

The crux of this informal report stems from the following *obiter* comments made by Justice Sopinka regarding specific performance:

> Different considerations apply where the thing which is to be purchased is unique. Although some chattels such as rare paintings fall into this category, the concept of uniqueness has traditionally been peculiarly applicable to agreements for the purchase of real estate. Under the common law every piece of real estate was generally considered to be unique. Blackacre had no readily available equivalent. Accordingly, damages were an inadequate remedy and the innocent purchaser was generally entitled to specific performance. (para. 14)
>
> While at one time the common law regarded every piece of real estate to be unique, with the progress of modern real estate development this is no longer the case. Residential, business and industrial properties are all mass produced much in the same way as other consumer products. If a deal falls through for one property, another is frequently, though not always, readily available. (para. 20)
>
> It is no longer appropriate, therefore, to maintain a distinction in the approach to specific performance as between realty and personalty. It cannot be assumed that damages for breach of contract for the purchase and sale of real estate will be an inadequate remedy in all cases. The common law recognized that the distinction might not be valid when the land had no peculiar or special value. (para. 21)
>
> Courts have tended, however, to simply treat all real estate as being unique and to decree specific performance unless there was some other reason for refusing equitable relief... Specific performance should, therefore, not be granted as a matter of course absent evidence that the property is unique to the extent that its substitute would not be readily available. (para. 22)

C. POST *SEMELHAGO*

The state of the law in what has been described by some as the "post-*Semelhago* era"[7] can be stated as a presumption against the primacy of specific performance for defaults of contracts for the sale and purchase of land and a presumption in favour of damages being the only appropriate remedy. Notably, where a purchaser is seeking to obtain the subject property for investment purposes, the burden to prove the inadequacy of damages has become extremely difficult.[8] As observed by some commentators:

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[6] Concern was expressed over the potential windfall that may benefit a plaintiff who obtains damages in lieu of specific performance as an alternative relief when land values increase during the litigation period.

[7] Anger and Honsberger, *supra* note 2 at 23-22.

[8] Anger and Honsberger, *ibid.* at 23-16 to 23-22.

> As the uniqueness requirement has evolved, it is clear that both subjective and objective factors will be considered and that, likely, they will be examined differently should the subject land be residential or commercial in nature. Objective factors are those that would distinguish the particular parcel from other lands, located within a reasonable distance, through demonstrable characteristics that the market for such land would be regarded as desirable. A subjective examination would look at the nexus between the characteristics of the particular land and the purpose(s) for which the purchaser is seeking to acquire it. The cases to date have tended to take a different approach to the uniqueness requirements for residential and commercial lands.
>
> Generally, the cases involving the acquisition of residential properties have demonstrated a greater willingness to include within their subjective analysis the idiosyncratic desires of the purchaser.
> ...
> While the test for determining the uniqueness of commercial properties also contains subjective and objective elements, it would appear that the subjectivity element is not as idiosyncratic in nature. What is emerging is a 'business rationale' test for which the (subjective) business case for desiring the particular commercial property is examined through a due diligence (objective) appraisal by the court. Thus, the court will examine the nexus between the plaintiff's business plan and the amenities of the subject property. Specific performance may be granted if those amenities cannot readily be found elsewhere.[9]

A corollary impact of *Semelhago*, which some have seen as a significant shortcoming,[10] is that absent an entitlement to specific performance, purchasers may not have sufficient interest in land with which to file a caveat against title.[11]

The effect of *Semelhago* on real estate transactions has been the subject of a recent report issued by the Alberta Law Reform Institute[12] which recommended that legislation be enacted to overrule *Semelhago* with respect to the uniqueness requirement, so that specific performance of a contract for the sale and purchase of land would be available regardless of proof of uniqueness, and so that caveat registration in these circumstances would be ensured.

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[9] Anger and Honsberger, *ibid.* 22-23 to 22-24.

[10] ALRI Report, *infra* note 12. This concern has also been raised with the Manitoba Law Reform Commission by a Manitoba lawyer specializing in real property law, and is discussed further on page 9 of this report.

[11] In *1244034 Alberta Ltd.* v. *Walton International Group Inc.*, *supra* note 4, an application to discharge a caveat and remove a *lis pendens* was filed. The Alberta Court of Appeal stated that "Once it has been determined that damages are an adequate remedy, there is no "interest in land" capable of protection by caveat. With no interest in land required to be protected, there is no basis to tie up development of the land pending resolution of the litigation." The court observed that property is not unique in the sense required for specific performance just because it has special attributes of location, favourable price or the possibility of further development.

[12] Alberta Law Reform Institute, Final Report No. 97, October 2009, *Contracts for the Sale and Purchase of Land: Purchasers' Remedies.*

The Manitoba Law Reform Commission concurs with the following observations and recommendation made by the Alberta Law Reform Institute and suggests that similar recommendations could protect parties to real estate transactions in Manitoba:

> [26] *Semelhago* and the Court of Appeal decisions cited have reversed that assumption of uniqueness in land contracts. They hold that, because times have changed, the exception allowing for specific enforcement of contracts for the sale and purchase of land on grounds of assumed uniqueness is no longer available unless it can be shown that the land in question is unique in the sense that there is no substitute that will meet the purchaser's needs. Therefore, the proposition that specific performance should not be granted unless damages is an inadequate remedy comes into play: specific performance will not be granted if damages is an adequate remedy, and damages will be assumed to be an adequate remedy unless the land is shown to be unique in the *Semelhago* sense.
>
> [27] We pause here to note that, whether or not land is unique in the sense that there is no readily available substitute, it is unique in a number of ways. These aspects of uniqueness are as follows:
>
> - no other land has the same boundaries and precisely the same physical characteristics;
> - the parcel is immovable and indestructible;
> - the land has been uniquely identified by the parties in a contract.
>
> Where the land is covered by a certificate of title, which is the usual case, the land has further aspects of uniqueness as follows:
>
> - ownership of the land is determined by a public record;
> - ownership of the land can be changed by an entry in a public record by a public official at the instance of the court.
>
> The cumulative effect of these aspects of uniqueness is to make specific performance peculiarly effective with relation to land as enforcement of an order of specific performance is simple and does not require extensive supervision by the court. They also help to justify the former assumption of uniqueness.
>
> [34] We do not suggest in this discussion that the law relating to specific performance be changed in any way except for the specific recommendation we will later make, to the effect that the law, including equity, should be changed so that the lack of "uniqueness" of land will not be a bar to a purchaser's claim for specific performance… The only change will be that there will no longer be a requirement that the land be unique in order that specific performance may be available.
>
> [41] Giving a purchaser precisely what the purchaser contracted for and the vendor agreed to convey is fairer to the purchaser than giving them a substitute amount of money.
>
> [42] A vendor under a contract for the sale and purchase of land has freely given their promise to convey the land to the purchaser on performance of the purchaser's obligations under the contract. The vendor has exacted a promise to pay a purchase price in an amount to which they have agreed. The vendor has received the whole price or it is available to them, as specific performance would not otherwise be granted. Specific performance merely adopts the bargain freely entered into by the parties. It is entirely fair to hold the vendor to their promise to convey the land upon being paid in full. Fairness does not require that the vendor be entitled to resell the land or otherwise turn it to profit exceeding the damages the vendor will have to pay to the purchaser.

[53] The uncertainty caused by the uniqueness test will lead to inefficiency in disposing of litigation between vendors and purchasers. It is important that there be a clear rule as to when specific performance will be available. The uniqueness test as laid down in *Semelhago* and other cases is likely to require an assessment of uniqueness that, because of the complexity of the circumstances, can be made only by a court, leaving a vendor and purchaser in a state of uncertainty about the availability of specific performance. The purchaser will be put to expense to prove their case for uniqueness. Additional judicial resources will be required to hear the case and make the determination.

[68] In our opinion, a purchaser under a contract for the sale and purchase of land should be entitled to an interest in the land from the time of the contract and should be entitled to file a caveat protecting that interest. The parties have identified the specific land; the vendor has granted the purchaser the right to receive ownership on payment of the purchase price; and the purchaser has paid part of the purchase price and has undertaken a contractual obligation to pay the balance. If the purchaser is not allowed to protect their rights under the contract by a caveat, the vendor may transfer the land to someone else, thus defeating the purchaser's claim to specific performance of the contract. These facts are sufficient to give the purchaser a legitimate claim against the land.

[72]...it is our opinion: 1. that an order for specific performance of a contract for the sale and purchase of land in favour of the purchaser under the contract is generally fairer to both parties, more efficiently obtained, and more effective in achieving the objectives of the law than is an award of damages;
2. that specific performance should not be denied on the grounds that the land is not "unique," in the sense that no substitute is readily available;
3. that otherwise the law relating to specific performance of such contracts, including its equitable defences, should remain the same as it was before *Semelhago*;
4. that a contract for the sale and purchase of land should confer on the purchaser an interest in the land and, if there is a certificate of title to the land, the consequent right to file a caveat protecting the interest.

[73] In our opinion, the objectives listed in the preceding paragraph will all be accomplished by a legislative provision that, for the purpose of determining whether or not the purchaser under a contract for the sale and purchase of land is entitled to an order of specific performance of the contract, land that is the subject of the contract is conclusively deemed to be unique at all material times. Such a provision would restore the pre-*Semelhago* law under which a contract for the sale and purchase of land conferred on the purchaser an interest in the land and, if there was a certificate of title to the land, the consequent right to file a caveat protecting the interest.[13]

RECOMMENDATION No. 1
That our Recommendations apply to any of the following that meet the standard criteria for the formation of contracts, all of which we include in the term "contract for the sale and purchase of land":
(a) a contract providing for payment of the purchase price over time,
(b) a contract entered into for closing at a future time,
(c) an option for the purchase of land where the option has been exercised,
(d) an offer in writing

[13] In Manitoba, such a provision goes further than restoring the law as it existed prior to *Semelhago*, and modifies the law by conclusively deeming land to be unique.

(i) by a purchaser to an owner of land for the purchase of the land from the owner, or
(ii) by an owner of land to a purchaser for the sale of the land to the purchaser if the offer has been accepted in writing by the other party, and

(e) an agreement to grant a lease.

RECOMMENDATION No. 2

That for the purpose of determining whether a purchaser under a contract for the sale and purchase of land is entitled to specific performance of the contract, the land that is the subject of the contract be conclusively deemed to be unique at all material times. Legislation should be enacted to provide for the conclusive deeming.

RECOMMENDATION No. 3

That a contract for the sale and purchase of land should confer on the purchaser an interest in the land and, if the land is subject to a certificate of title, a right to file a caveat protecting that interest. The legislation provided for in Recommendation No. 2 will restore the law as it existed before *Semelhago* and will thus confer on the purchaser an interest in land and the right to file a caveat protecting the interest.[14]

D. CASE LAW IN MANITOBA

While *Semelhago* has not yet had the impact in Manitoba as it has had elsewhere in Canada, similar issues have arisen in Manitoba. The following is a discussion of two recent Manitoba decisions where claims for specific performance were made in connection with unfulfilled contracts for the sale and purchase of land.

Chanh Dao Vietnamese Buddhist Association of Manitoba Inc. v. Manitoba Korean Presbyterian Church Inc.,[15] involved a dispute over the validity of an agreement for the sale and purchase of property used as a place of worship. The plaintiff filed a motion for summary judgment and sought specific performance as a remedy. The court held that the offer to purchase was a valid contract, and in granting summary judgment the court stated that specific performance was the only appropriate remedy and there was no reason why the plaintiffs "should not receive the premises for which it contracted." The court noted that the defendants had not argued that specific performance would be inappropriate. An analysis based upon *Semelhago* did not occur and there was no mention of any uniqueness of the property or of any difficulty in assessing damages. The decision seems to have been decided upon a notion of fairness that the defendant should be bound by the contract it made and that the plaintiff should receive the property for which it contracted.

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[14] *Ibid.*

[15] 2009 MBQB 307, [*Buddhist Association*].

In *Trico Developments Ltd. v. 5117089 Manitoba Ltd.*[16] the defendants failed to close a real estate sale and purchase transaction and in granting summary judgment and awarding specific performance, the court observed as follows:

> The plaintiff is seeking an order of specific performance. Even if I am satisfied that the defendant was obliged to reconvey the land to the plaintiff pursuant to its agreement, it does not automatically follow that I should issue an order of specific performance. There are cases where damages are the best remedy. However, the plaintiff has satisfied me that damages would not be the appropriate remedy. From the plaintiff's perspective, there is an element of uniqueness to this land. Indeed, the parties agreed that this was so…
>
> The finding of uniqueness makes it difficult to determine its present value. Specifically, the plaintiff owns property immediately adjacent to the land at issue here. The land cannot be developed without a cross-access agreement. If the plaintiff loses control of the land, its ability to develop the adjacent property could be impaired. Moreover, assembling a larger piece of land no doubt generates more development options, and thus value. **In any event, I am satisfied that the fairest remedy is to hold the defendant to its original bargain**. I, therefore, order that it transfer title to the land to the plaintiff in accordance with the agreement.[17] (emphasis added)

Although *Semelhago* was not mentioned by the court in *Trico*, a similar analysis was conducted and the decision was made based upon property uniqueness and the difficulty in assessing damages. Had *Semelhago* been applied, given that the subject property is commercial, perhaps the same conclusion would not have been reached. Moreover, similar to the decision in *Buddhist Association*, the court was influenced by the fairness of holding the parties to their original contract.

The Commission is concerned that if the post-*Semelhago* trend emerges in Manitoba, purchasers and vendors may experience uncertainty and increased litigation, as experienced in other provinces. In the consultation phase of this project, it was suggested to the Commission by a lawyer specializing in real property law that in Manitoba every piece of land is generally considered to be unique, and it was respectfully suggested that *Semelhago* and subsequent appellate decisions lack a "real world understanding" and are inconsistent with the practice and perception in Manitoba. Also during the consultation phase of this project it was submitted that the restriction on caveat filing pending the resolution of a failed transaction is extremely concerning. It was suggested to the Commission that once a sale and purchase transaction breaks down, a purchaser, as the beneficial owner, would want to immediately protect their claimed interest in order to establish their priority, long before a court determination as to specific performance could be made. It was also suggested to the Commission that a right to file a caveat in these circumstances ought to be expressly provided for in *The Law of Property Act*.[18] Finally, during the consultation stage of this project, it was submitted that the subjective and objective

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[16] 2008 MBQB 139, 229 Man.R. (2d) 79, appeal dismissed 2009 MBCA 3, 236 Man.R. (2d) 91, [*Trico*].
[17] *Ibid.* at para. 42-43.
[18] C.C.S.M. c. L90.

analysis being applied for commercial property creates an unreasonably high standard to prove uniqueness for commercial purchasers who encounter reneging vendors.

Should *Semelhago* be overridden by legislative enactment, the courts could still decline to grant specific performance in appropriate situations, such as equitable bars to relief, contractual defences or where damages are sought in lieu of specific performance.

E. RECOMMENDATIONS:

The Manitoba Law Reform Commission makes the following recommendations (which are adapted from the Alberta Law Reform Institute):

RECOMMENDATION 1

That our Recommendations apply to any of the following that meet the standard criteria for the formation of contracts, all of which we include in the term "contract for the sale and purchase of land":

(a) a contract providing for payment of the purchase price over time,
(b) a contract entered into for closing at a future time,
(c) an option for the purchase of land where the option has been exercised,
(d) an offer in writing
    (i) by a purchaser to an owner of land for the purchase of the land from the owner, or
    (ii) by an owner of land to a purchaser for the sale of the land to the purchaser if the offer has been accepted in writing by the other party,
(e) an agreement to grant a lease.

RECOMMENDATION 2

That for the purpose of determining whether a purchaser under a contract for the sale and purchase of land is entitled to specific performance of the contract, the land that is the subject of the contract be conclusively deemed to be unique at all material times. Legislation should be enacted to provide for the conclusive deeming.

RECOMMENDATION 3

That a contract for the sale and purchase of land should confer on the purchaser an interest in the land and, if the land is subject to a certificate of title, a right to file a caveat protecting that interest.

RECOMMENDATION 4

That *The Law of Property Act*[19] should be amended to implement the recommendations made in this informal report.

[19] *Ibid.*

This is informal report no. 26 pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L96, signed this 26th day of October, 2010.

"Original Signed by"
Cameron Harvey, President

"Original Signed by"
John C. Irvine, Commissioner

"Original Signed by"
Gerald O. Jewers, Commissioner

"Original Signed by"
Perry W. Schulman, Commissioner

APPENDIX C

REPORTS OF THE MANITOBA LAW REFORM COMMISSION AND THEIR IMPLEMENTATION

Report #	Title	Date	Implementation of Commission's Recommendations
#1	Jury Services for Registered Indians	April 7, 1971	An Act to Amend The Jury Act, S.M. 1971, c. 32
#2	Summary Disposition of Builders' and Workmen's Liens	April 13, 1971	An Act to Amend The Builders and Workmen Act, S.M. 1976, c. 22
#3	Disposition of Maintenance Judgments in Land Titles Offices	May 25, 1971	An Act to Amend The Judgments Act, S.M. 1972, c. 4
#4	An Act Respecting Billiard and Pool Rooms proposed repeal	October 19, 1971	The Statute Law Amendment Act (1974), S.M. 1974, c. 59 (s. 8)
#5	Recommended Right of Mortgagors to Obtain Annual Statements	October 19, 1971	An Act to Amend The Mortgage Act, S.M. 1971, c. 28
#6	Enactment of a Mineral Declaratory Act	December 20, 1971	The Sand and Gravel Act, S.M. 1972, c. 34 An Act to Amend The Mines Act, S.M. 1972, c. 70 (s. 11) An Act to Amend The Real Property Act, S.M. 1972, c. 70 (ss. 15 and 16)
#7	Powers of Entry, Search and Seizure in The City of Winnipeg Act	January 24, 1972	An Act to Amend The City of Winnipeg Act, S.M. 1972, c. 93 (ss. 26, 37, 68, 69, 89 and in part ss. 38, 39 and 63)
1A	Auto Engine Numbers in Section 11 of The Bills of Sale Act	May 11, 1971	The Statute Law Amendment Act, S.M. 1972, c. 81 (s. 3)
1B	(a) Prospect of Mortgagor's Relief from Provisions of Section 20(6) of The Mortgage Act (b) Right to Have Mortgage Discharged Upon Payment in Full After Five Years	December 29, 1971 December 29, 1971	(change not recommended) An Act to Amend The Real Property Act, S.M. 1972, c. 37 (s. 103(1)
1C	Amending provisions as to costs in Part II of The County Courts Act to avoid inconsistency with intent of this new legislation	January 12, 1972	An Act to Amend The County Courts Act, S.M. 1972, c. 38

Report #	Title	Date	Implementation of Commission's Recommendations
	First Annual Report	March 13, 1972	(not applicable)
#8	Section 45 of the Offenses Against the Person Act, 1861	July 27, 1972	An Act to Amend The Tortfeasors and Contributory Negligence Act, S.M. 1973, c. 13
#9	A Review of The Privacy Act with proposed Amendments to the Criminal Code of Canada	September 11, 1972	(change not recommended)
#10	The Abolition of Interspousal Immunity in Tort	December 19, 1972	An Act to Amend The Married Women's Property Act, S.M. 1973, c. 12; An Act to Amend The Tortfeasors and Contributory Negligence Act, S.M. 1973, c. 13; An Act to Amend The Criminal Injuries Compensation Act, S.M. 1973, c. 23
2A	Comments on draft Bill to Amend The Jury Act	April 21, 1972	An Act to Amend The Jury Act, S.M. 1972, c. 56
2B	Relaxation of Limit of Number of Trustees under The Trustee Act	June 22, 1972	An Act to Amend The Trustee Act, S.M. 1972, c. 60
2C	Uniformity of Definition of Age as between The Age of Majority Act (Man.) And the Criminal Code and the Interpretation Act (Can.)	August 14, 1972	(not applicable for provincial amendment)
2D	Automatic Attachment of Wages for Maintenance Orders	November 27, 1972	An Act to Amend The Garnishment Act, S.M. 1974, c. 8
	Second Annual Report	March 20, 1973	(not applicable)
#11	The Advisability of a Good Samaritan Law	March 8, 1973	(change not recommended)
#12	Section 110 of The Real Property Act - the immortal Manitoba mortgage	April 11, 1973	An Act to Amend The Real Property Act, S.M. 1974, c. 44
#13	Pre-licensing Education for Real Estate Agents in Manitoba	December 3, 1973	An Act to Amend The Real Estate Brokers Act, S.M. 1975, c. 23
#14	Special Enduring Powers of Attorney	January 8, 1974	The Powers of Attorney Act, S.M. 1980, c. 4

Report #	Title	Date	Implementation of Commission's Recommendations
#15	Administration of Justice Part I - Control of Post-arrest/pre-trial detention	February 26, 1974	Administration of the Public Safety Building in Winnipeg assumed by the Province of Manitoba, effective October 1, 1977; now called The Winnipeg Remand Centre
3A	Conferring of matrimonial jurisdiction upon a County Court Judge as a local Judge of The Queen's Bench within the Eastern Judicial District	March 30, 1973	An Act to Amend The Queen's Bench Act, S.M. 1978, c. 28
3B	Correcting recent error in s. 51 of The Queen's Bench Act	September 26, 1973	An Act to Amend The Queen's Bench Act, S.M. 1974, c. 15
3C	Conferring jurisdiction to extend time for payment of fines upon provincial judges other than those who imposed such fines	October 16, 1973	(not applicable for provincial enactment)
3D	Up-dating index to Statutes of Manitoba	October 23, 1973	Indexing commenced; computer search of statutes available
3E	Repeal of Section 212 of The Liquor Control Act	December 19, 1973	Substantial acceptance under s. 16 of An Act to Amend The Liquor Control Act, S.M. 1974, c. 63
	Third Annual Report	April 1, 1974	(not applicable)
#16	Definition of Death	May 6, 1974	An Act to Amend The Vital Statistics Act, S.M. 1975, c. 5
#17	An International Form of Wills for Manitobans	May 6, 1974	An Act to Amend The Wills Act, S.M. 1975, c. 6
#18	The Rule in Saunders v. Vautier	January 8, 1975	An Act to Amend The Trustee Act, S.M. 1982-83-84, c. 38 (s. 4)
#19	The Administration of Justice in Manitoba Part II - Review of The Jury System	February 11, 1975	An Act to Amend The Jury Act, S.M. 1977, c. 18
4A	Interprovincial Subpoenas	January 27, 1975	The Interprovincial Subpoena Act, S.M. 1975, c. 3
4B	Enforcement of Custody Orders	January 27, 1975	The Extra-Provincial Custody Orders Enforcement Act, S.M. 1975, c. 4
4C	Statutory Sums	February 11, 1975	Various amendments to Manitoba statutes

Report #	Title	Date	Implementation of Commission's Recommendations
	Fourth Annual Report	April 9, 1975	(not applicable)
#20	The Highway Traffic Act	June 16, 1975	An Act to Amend The Highway Traffic Act, S.M. 1977, c. 34 An Act to Amend The Highway Traffic Act and The Tortfeasors and Contributory Negligence Act, S.M. 1980, c. 19
#21	The Administration of Justice in Manitoba Part III - Consolidation of Extra-Provincial Judgment Enforcement	January 28, 1976	-
#22	Some Aspects of Fire Insurance Legislation in Manitoba	February 9, 1976	An Act to Amend The Insurance Act, S.M. 1982, c. 11 (s. 1)
#23	Family Law - Part I The Support Obligation	February 27, 1976	The Family Maintenance Act, S.M. 1978, c. 25
#24	Family Law - Part II Property Disposition	February 27, 1976	An Act to Amend The Gift Tax Act (Manitoba) and The Succession Duty Act (Manitoba), S.M. 1977 (2nd Session), c. 2 The Marital Property Act, S.M. 1978, c. 24 An Act to Amend various Acts relating to Marital Property, S.M. 1978, c. 27 An Act to Amend The Wills Act, S.M. 1980, c. 7
5A	Limitation of Actions for the taking away, conversion or detention of chattels	May 26, 1975	An Act to Amend The Fatal Accidents Act and Limitation of Actions Act, S.M. 1976, c. 41 (ss. 2-4)
	Fifth Annual Report	March 29, 1976	(not applicable)
#25	The Case for a Provincial Bill of Rights	May 19, 1976	-
#26	Revision of Birth Certificates of Trans-sexual Persons	September 13, 1976	The Vital Statistics Act, S.M. 1982-83-84, c. 58
	Sixth Annual Report	March 14, 1977	(not applicable)

Report #	Title	Date	Implementation of Commission's Recommendations
7A	The Local Authorities Election Act	May 31, 1977	An Act to Amend The Local Authorities Election Act, S.M. 1980, c. 48
	Seventh Annual Report	March 1, 1978	(not applicable)
#27	Limitation of Actions: Time Extensions for Children, Disabled Persons and Others	January 8, 1979	An Act to Amend The Limitation of Actions Act, S.M. 1980, c. 28
#28	Enforcement of Judgments Part I: Exemptions under The Garnishment Act	January 8, 1979	An Act to Amend The Garnishment Act, S.M. 1979, c. 8
#29	Emergency Apprehension, Admissions and Rights of Patients under The Mental Health Act	February 12, 1979	An Act to Amend The Mental Health Act, S.M. 1980, c. 62
#30	Confidentiality of Adoption Records	February 12, 1979	An Act to Amend The Child Welfare Act, S.M. 1979, c. 22 (s. 60) An Act to Amend The Child Welfare Act, S.M. 1980, c. 41 Establishment of a Post-adoption Registry
8A	Section 5(1) of The Social Allowances Act	March 30, 1978	The Statute Law Amendment Act (1984), S.M. 1984, c. 17
	Eighth Annual Report	February 12, 1979	(not applicable)
#31	Political Financing and Election Expenses	August 13, 1979	The Elections Finances Act, S.M. 1980, c. 68
#32	Mechanics' Liens Legislation	August 13, 1979	The Builders' Liens Act, S.M. 1980-81, c. 7
#33	Enforcement of Revenue Statutes	August 13, 1979	The Charter Compliance Statute Amendment Act, S.M. 1985, c. 50
#34	Enforcement of Judgments Part III: Exemptions under The Executions Act	October 22, 1979	An Act to Amend The Executions Act, S.M. 1980, c. 55
#35	Estate Claims for Loss of Expectation of Life	October 22, 1979	An Act to Amend The Fatal Accidents Act and The Trustee Act, S.M. 1980, c. 5

Report #	Title	Date	Implementation of Commission's Recommendations
#36	Improved Methods of Enforcing Support Orders Against Real Property	November 19, 1979	The Family Law Amendment Act, S.M. 1980, c. 54
#37	Systems of Voter Registration	November 26, 1979	The Elections Act, S.M. 1980, c. 67
#38	The One Year Rule for Enforcement of Arrears in Maintenance	January 21, 1980	An Act to Amend The Family Maintenance Act and The Queen's Bench Act, S.M. 1980, c. 21
9A	The Fire Departments Arbitration Act	April 17, 1979	An Act to Amend The Fire Departments Arbitration Act, S.M. 1980, c. 27
9B	Section 7 of The Payment of Wages Act	August 15, 1979	An Act to Amend The Payment of Wages Act, S.M. 1980, c. 57
9C	The Seduction Act	October 22, 1979	The Equality of Status Act, S.M. 1982, c. 10
9D	Section 9 of The Manitoba Evidence Act	November 6, 1979	An Act to Amend The Manitoba Evidence Act, S.M. 1980, c. 26
9E	The Wills Act and Ademption	November 20, 1979	An Act to Amend The Wills Act, S.M. 1980, c. 7
9F	The term "illegitimate"	December 4, 1979	(change not recommended)
	Ninth Annual Report	February 25, 1980	(not applicable)
#39	Controverted Elections	April 21, 1980	The Elections Reform Act, S.M. 2006, c. 15 repealed The Controverted Elections Act and enacted The Elections Act, C.C.S.M. c. E30
#40	Enforcement of Judgments Part II: Exemptions under The Judgments Act	April 21, 1980	-
#41	The Statute of Frauds	August 11, 1980	An Act to repeal the Statute of Frauds, S.M. 1982-83-84, c. 34
#42	Occupiers' Liability	August 11, 1980	The Occupiers' Liability Act, S.M. 1982-83-84, c. 29; The Statute Law Amendment Act (1984), S.M. 1984, c. 17 (s. 28)
#43	The Wills Act and the Doctrine of Substantial Compliance	September 8, 1980	The Wills Act, S.M. 1982-83-84, c. 31

Report #	Title	Date	Implementation of Commission's Recommendations
#44	The General Register	September 22, 1980	The Real Property Act and Various Other Acts Amendments Act, S.M. 1987, c. 27
#45	Simplified Mortgage	December 15, 1980	(legislative amendment not required)
10A	Municipal Assessment of Personal Property	February 26, 1980	(referred to Special Committee)
10B	The Marriage Settlement Act	October 9, 1980	The Statute Law Amendment Act, S.M. 1980-81, c. 26 (s. 22)
	Tenth Annual Report	February 16, 1981	(not applicable)
#46	Conflict of Interest of Municipal Councillors	April 14, 1981	The Municipal Conflict of Interest Act, S.M. 1982-83-84, c. 44
#47	Prejudgment Compensation on Money Awards: Alternatives to Interest	January 4, 1982	The Judgment Interest and Discount Act, S.M. 1986, c. 39 (implemented in principle) (now contained in Part XIV of The Court of Queen's Bench Act)
#48	Prescriptive Easements and Profits-a-prendre	January 18, 1982	-
#49	The Rules Against Accumulations and Perpetuities	February 12, 1982	The Perpetuities and Accumulations Act, S.M. 1982-83-84, c. 43
#50	Investment Provisions under The Trustee Act	February 12, 1982	An Act to Amend The Trustee Act, S.M. 1982-83-84, c. 38
11A	Parents' Maintenance Legislation	March 3, 1981	The Parents' Maintenance Act, S.M. 1985-86, c. 47, s. 34
11B	Provincial Offences Procedures	June 29, 1981	An Act to Amend The Summary Convictions Act, S.M. 1982, c. 24
11C	The Remembrance Day Act	January 28, 1982	-
	Eleventh Annual Report	February 14, 1982	(not applicable)
#51	The Survivorship Act	September 7, 1982	The Survivorship Act, S.M. 1982-83-84, c. 28

Report #	Title	Date	Implementation of Commission's Recommendations
#52	Structure of the Courts, Part I: Amalgamation of the Court of Queen's Bench and the County Courts of Manitoba	October 25, 1982	An Act to Amend The Queen's Bench Act and to repeal The County Courts Act, The Surrogate Courts Act and The County Court Judges' Criminal Courts Act and to amend The Municipal Boundaries Act, S.M. 1982-83-84, c. 82 The Court of Queen's Bench Small Claims Practices Act, S.M. 1982-83-84, c. 83 The Court of Queen's Bench Surrogate Practice Act, S.M. 1982-83-84, c. 84 An Act to amend Various Acts of the Legislature to facilitate the Reorganization and Expansion of the Court of Queen's Bench, S.M. 1982-83-84, c. 85
#53	The Law of Domicile	December 1, 1982	The Domicile and Habitual Residence Act, S.M. 1982-83-84, c. 80
#54	Certificates of Lis Pendens	February 1, 1983	The Court of Queen's Bench Act, S.M. 1988-89, c. 4 (s. 58)
#55	Structure of the Courts, Part II: The Adjudication of Smaller Claims	March 7, 1983	The Statute Law Amendment Act (1985), S.M. 1985, c. 51
	Twelfth Annual Report	April 11, 1983	(not applicable)
#56	Medical Privilege	October 4, 1983	(privilege not recommended)
#57	Uniform Sale of Goods Act	November 1, 1983	-
	Thirteenth Annual Report	April 2, 1984	(not applicable)
#58	Administrative Law; Part I: Procedures of Provincial Government Agencies	June 29, 1984	(legislative amendment not required); implementation, in part, through governmental policy
#59	Breach of Promise to Marry	October 1, 1984	The Family Law Amendment Act, S.M. 1987, c. 21
14A	Jactitation of Marriage	October 5, 1984	The Family Law Amendment Act, S.M. 1987, c. 21

Report #	Title	Date	Implementation of Commission's Recommendations
#60	An Examination of The Dower Act	November 19, 1984	The Homesteads, Marital Property Amendment and Consequential Amendments Act, S.M. 1992, c. 46
#61	Intestate Succession	March 25, 1985	The Intestate Succession and Consequential Amendments Act, S.M. 1989-90, c. 43
	Fourteenth Annual Report	April 2, 1985	(not applicable)
#62	Small Projects 1) Section 6 of The Mercantile Law Amendment Act 2) The Rule in Shelley's Case 3) Permissive and Equitable Waste	October 7, 1985	The Law Reform (Miscellaneous Amendments) Act, S.M. 1992, c. 32
#63	The Testators Family Maintenance Act	December 16, 1985	The Dependants Relief Act, S.M. 1989-90, c. 42
#64	The Married Women's Property Act and Related Matters	December 16, 1985	-
#65	Section 83 of The Queen's Bench Act	March 31, 1986	The Statute Law Amendment Act (1986), S.M. 1986-87, c. 19 (s. 12)
#66	The Human Tissue Act	March 31, 1986	The Human Tissue Act, S.M. 1987, c. 39; The Human Tissue Amendment Act, S.M. 1989-90, c. 28 An Act to Amend The Anatomy Act, S.M. 1987, c. 57
15A	Section 300 of The Liquor Control Act	June 17, 1985	The Law Reform (Miscellaneous Amendments) Act, S.M. 1992, c. 32
	Fifteenth Annual Report	May 6, 1986	(not applicable)
#67	Sections 33 and 34 of The Wills Act	June 16, 1986	The Statute Law Amendment Act (1987), S.M. 1987-88, c. 66 (s. 25); The Wills Amendment Act, S.M. 1989-90, c. 44
#68	Periodic Payment of Damages	March 31, 1987	The Court of Queen's Bench and Consequential Amendments Act, S.M. 1993, c. 19

Report #	Title	Date	Implementation of Commission's Recommendations
#69	Administrative Law, Part II: Judicial Review of Administrative Action	March 31, 1987	-
	Sixteenth Annual Report	April 13, 1987	(not applicable)
17A	The Wages Recovery Act	September 9, 1987	The Law Reform (Miscellaneous Amendments) Act, S.M. 1992, c. 32
	Seventeenth Annual Report	September 14, 1988	(not applicable)
#70	The Manitoba Law Reform Commission: A Framework for the Future	November 23, 1988	The Law Reform Commission Act, S.M. 1989-90, c. 25
#71	The Bulk Sales Act	December 21, 1988	The Law Reform (Miscellaneous Amendments) Act, S.M. 1992, c. 32
	Eighteenth Annual Report	August 8, 1989	(not applicable)
#72	The Independence of Provincial Judges	June 28, 1989	The Provincial Court Amendment Act, S.M. 1989-90, c. 34; The Provincial Court Amendment Act, S.M. 1994, c. 14
	Nineteenth Annual Report	May 15, 1990	(not applicable)
#73	Statutory Designations and The Retirement Plan Beneficiaries Act	October 23, 1990	The Retirement Plan Beneficiaries Act, S.M. 1992, c. 31
20A	Limitation of Actions Brought by the Crown	September 27, 1990	-
20B	Replevin and the Need for Prior Possession	January 28, 1991	(change not recommended)
	Twentieth Annual Report	March 31, 1991	(not applicable)
#74	Self-Determination in Health Care (Living Wills and Health Care Proxies)	June 25, 1991	The Health Care Directives and Consequential Amendments Act, S.M. 1992, c. 33
#75	The Independence of Justices of the Peace and Magistrates	August 15, 1991	The Provincial Court Amendment Act (Justices of the Peace), S.M. 2005, c. 8
#76	Sterilization and Legal Incompetence	January 27, 1992	(change not recommended)
	Twenty-first Annual Report	March 31, 1992	(not applicable)

Report #	Title	Date	Implementation of Commission's Recommendations
#77	Non-charitable Purpose Trusts	September 21, 1992	-
#78	Tort Liability for Animals	November 23, 1992	The Animal Liability and Consequential Amendment Act, S.M. 1998, c. 8
#79	Ethical Investments by Trustees	January 25, 1993	The Trustee Amendment Act, S.M. 1995, c. 14
22A	Scope of Apportionment under The Tortfeasors and Contributory Negligence Act	June 22, 1992	-
22B	Section 23 of The Wills Act Revisited	December 14, 1992	The Wills Amendment Act, S.M. 1995, c. 12
	Twenty-second Annual Report	March 31, 1993	(not applicable)
#80	Privity of Contract	October 5, 1993	-
#81	Distress for Rent in Commercial Tenancies	January 4, 1994	-
#82	Pre-contractual Misstatements	March 7, 1994	-
#83	Enduring and Springing Powers of Attorney	March 29, 1994	The Powers of Attorney and Mental Health Amendment Act, S.M. 1996, c. 62
	Twenty-third Annual Report	March 31, 1994	(not applicable)
#84	Regulating Professions and Occupations	October 28, 1994	Partly implemented, in principle, by amendments to various Acts of the Legislature; *The Regulated Health Professions Act*, S.M. 2009, c. 15
#85	Arbitration	November 28, 1994	The Arbitration and Consequential Amendments Act, S.M. 1997, c. 4
#86	Covenants in Commercial Tenancies	March 28, 1995	-
24A	A Small Discrepancy between The Elections Act and The Local Authorities Election Act	April 26, 1994	Acts repealed and replaced by The Elections Reform Act, S.M. 2006, c. 15 and The Municipal Councils and School Boards Elections Act, S.M. 2005, c. 27.
24B	Lapsed Residual Gifts in Wills	May 16, 1994	(no longer required due to *Re Smith and McKay* (1994), 116 D.L.R. (4th) 308 (Man. C.A.))

Report #	Title	Date	Implementation of Commission's Recommendations
24C	Security for the Administration of Estates	October 6, 1994	-
	Twenty-fourth Annual Report	March 31, 1995	(not applicable)
#87	Interim Payment of Damages	June 6, 1995	-
#88	Reselling Unused Cemetery Plots	September 21, 1995	-
#89	The Trust Provisions in The Perpetuities and Accumulations Act	September 21, 1995	-
#90	Residential Exemptions from Judgment Execution	October 17, 1995	-
#91	Minors' Consent to Health Care	December 12, 1995	-
#92	Fundamental Breach and Frustration in Commercial Tenancies	January 23, 1996	-
#93	Animal Protection	February 13, 1996	The Animal Care Act, S.M. 1996, c. 69
	Twenty-fifth Annual Report	March 31, 1996	(not applicable)
#94	Confidentiality of Mediation Proceedings	April 23, 1996	-
#95	Commercial Tenancies: Miscellaneous Issues	July 29, 1996	-
#96	Special Constables	November 12, 1996	Implemented, in part, through administrative action of the Department of Justice's Law Enforcement Services
#97	Section 270 of The Highway Traffic Act	March 24, 1997	-
#98	Stalking	May 28, 1997	The Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendment Act, S.M. 1998, c. 41
	Twenty-sixth Annual Report	June 30, 1997	(not applicable)
#99	Review of the Small Claims Court	March 17, 1998	The Court of Queen's Bench Small Claims Practices Amendment and Parental Responsibility Amendment Act, S.M. 1999, c. 22

Report #	Title	Date	Implementation of Commission's Recommendations
	Twenty-seventh Annual Report	March 31, 1998	(not applicable)
#100	Class Proceedings	January 1999	The Class Proceedings Act, S.M. 2001-2002, c. 14
	Twenty-eighth Annual Report	March 31, 1999	(not applicable)
#101	Trustee Investments: The Modern Portfolio Theory	June 1999	-
#102	Informal Assessment of Competence	September 1999	-
#103	Adult Protection and Elder Abuse	December 1999	-
	Twenty-ninth Annual Report	March 31, 2000	(not applicable)
#104	Compensation of Vaccine-Damaged Children	June 2000	-
#105	Assessment of Damages under *The Fatal Accidents Act* for the loss of Guidance, Care and Companionship	October 2000	The Fatal Accidents Amendment Act, S.M. 2001-2002, c. 13
#106	The Legislative Assembly and Conflict of Interest	December 2000	The Legislative Assembly and Executive Council Conflict of Interest Amendment (Conflict of Interest Commissioner) Act, S.M. 2001-2002, c. 49
	Thirtieth Annual Report	March 31, 2001	(not applicable)
#107	Good Faith and the Individual Contract of Employment	December 2001	-
	Thirty-first Annual Report	March 31, 2002	(not applicable)
#108	Wills and Succession Legislation	March 11, 2003	-
	Thirty-second Annual Report	March 31, 2003	(not applicable)
#109	Withholding or Withdrawing Life Sustaining Medical Treatment	December 18, 2003	Implemented, in part, through The College of Physicians and Surgeons of Manitoba's Statement on Withholding and Withdrawing Life-Sustaining Treatment, effective February 1, 2008

Report #	Title	Date	Implementation of Commission's Recommendations
	Thirty-third Annual Report	March 31, 2004	(not applicable)
#110	Substitute Consent to Health Care	October 26, 2004	-
	Thirty-fourth Annual Report	March 31, 2005	(not applicable)
#111	Costs Awards in Civil Litigation	September 13, 2005	-
#112	Review of The Garnishment Act	December 31, 2005	-
	Thirty-fifth Annual Report	March 31, 2006	(not applicable)
#113	Development Schemes	June 30, 2006	-
#114	Private Title Insurance	December 31, 2006	-
	Thirty-sixth Annual Report	March 31, 2007	(not applicable)
	Thirty-seventh Annual Report	March 31, 2008	(not applicable)
#115	Mandatory Arbitration Clauses and Consumer Class Proceedings	April 31, 2008	-
#116	Franchise Law	May 31, 2008	The Franchises Act, S.M. 2010, c. 13
	Enduring Powers of Attorney: Areas for Reform (Western Canada Law Reform Agencies Report)	July, 2008	
#117	Enduring Powers of Attorney – Supplementary Report	September 31, 2008	-
#118	Posthumously Conceived Children: Intestate Succession and Dependants Relief – *The Intestate Succession Act*: Sections 1(3), 6(1), 4(5), 4(6) and 5	November 2008	-
#119	Private International Law	January 2009	-
	Twenty-eighth Annual Report	March 31, 2009	(not applicable)

Report #	Title	Date	Implementation of Commission's Recommendations
#120	Waivers of Liability for Sporting and Recreational Injuries	January, 2009	-
#121	Improving Administrative Justice in Manitoba: Starting with the Appointments Process	November, 2009	-
	Thirty-ninth Annual Report	March 31, 2010	(not applicable)
25	Review of Compensation of Loss of Homesteads Rights	May 27, 2010	(change not recommended)
#122	The Parol Evidence Rule	August 31, 2010	-
#123	Limitations	October 26, 2010	
26	Remedy of Specific Performance and the Uniqueness of Land in Manitoba	October 26, 2010	-
	Fortieth Annual Report	March 31, 2011	(not applicable)